THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.2707 OF 2017

O R D E R

This civil revision petition under Article 227 of the Constitution arises out of the order dated 25.10.2016 passed by the learned XII Additional District Judge, Vikarabad, in I.A.No.745 of 2015 in O.S.No.30 of 2015. The said IA was filed by defendant Nos.5 to 10 in the suit under Section 11(2) of the Andhra Pradesh Court Fee and Suits Valuation Act, 1956 (for brevity, 'the Act of 1956'), to decide the correctness of the suit valuation and the court fee paid thereon and to consequently direct the plaintiff to pay the deficit court fee.

O.S.No.30 of 2015 was filed for the following reliefs:

'a) Pass a preliminary decree directing partition of plaint schedule Property among the parties and allot 16.65% share in the Plaint schedule property to the plaintiff, while allotting a Share of 24.33% in the Plaint schedule property to the Defendant No.1, a Share of 24.32% in the Plaint schedule property to the Defendant No.2, a Share of 25.63% in the Plaint schedule property to the Defendant No.3, and a Share of 1.4% share in the Plaint schedule property to the Defendant No.4 (As she was already given 7.64%).

b) Thereby setting aside the Sale Deed, dated 03-05-1970, Vide Document No.1421/1970, registered on 07-05-1970, registered in the office of the Registrar, Hyderabad District, executed in favour of the mother of the defendants 5 to 9 and Defendant No.10 and 11 of the Schedule of Property.

c) Pass a final decree getting the said allotment done by meets and bounds by taking appropriate proceedings, by appointing a Commissioner for the purpose of physical division of such share among the parties.

d) Directing the concerned revenue authorities to make necessary corrections by showing the name of the plaintiff in the revenue record in respect of the suit schedule property by deleting the names of the defendants 5 to 11 from 1971 to till today.

e) Directing the defendants to pay the costs of the suit to the plaintiff;

f) Granting any other relief or reliefs to which the plaintiff is entitled.'

The plaintiff valued the suit as under:

> 'This suit is filed for partition of suit schedule property in respective shares and allotment of 16.65% share in the property to the plaintiff, while allotting a share of 24.33% to the Defendant No.1, a share of 24.32% to the Defendant No.2, a share of 25.63% to the Defendant No.3, and a share of 1.4% share to the Defendant No.4 (As she was already given 7.64%). The Value of the plaint schedule property is Rs.19,84,00,000/- the value of the 16.65% share claimed by the plaintiff is Rs.3,30,33,600/- that the 3/4th value of the same is Rs.2,47,75,200/- which is the value of the suit a court fees of Rs.200/- is paid herewith under section 34(2) of the A.P.C.F. and S.V.Act. The relief of cancellation of the Sale Deed, dated 03-05-1970, Vide Document No.1421/1970, registered on 07-05-1970, registered in the office of the Registrar, Hyderabad District, is executed in favour of the mother of the defendants No's.5 to 9 and Defendant No.11 and 12 for the suit Schedule of Property, is valued at Rs.12,500/- and a court fees of Rs.936/- is paid herewith under section 37 of the A.P.C.F. and S.V.Act. The relief of rectification of the revenue records from the year 1971 to till today i.e., year 2015 is separately valued for 45 years and a fixed court fees of Rs.15/- * 45=675/- is paid herewith under section 43 of APF and SV Act. Total court fees paid is Rs.1,811/- is paid herewith Vide Challan dt.05-06-2015, SBH Vikarabad, and the value of the suit for the purpose of jurisdiction is Rs.2,47,75,200/-.'

The case of defendant Nos.5 to 10 in the subject I.A. was that the plaintiff could not claim to be in joint possession of the suit schedule property and therefore, he ought not to have taken recourse to Section 34(2) of the Act of 1956 and paid a mere Rs.200/- as court fee. They contended that the plaintiff would be liable to pay court fee under Section 34(1) of the Act of 1956 on the basis of the market value. The respondent-plaintiff contested the claim of defendant Nos.5 to 10 asserting that he was in joint possession of the suit property, being one of the heirs of the original owner, Nawab Rais Yar Jung, and therefore, the question of his paying court fee under Section 34(1) of the Act of 1956 did not arise. The suit property, being an extent of Acs.248.00 guntas in various survey numbers of Shivareddypet Village, Vikarabad Taluq, Ranga Reddy District, originally belonged to late Nawab Rais Yar Jung.

By the order under revision, the trial Court took note of the fact that the second son of Nawab Rais Yar Jung, by name Mir Mujtaba Hussain, and his wife Basheerunnisa Begum, died leaving behind their two daughters, Muneerunnisa Begum (defendant No.1) and Sarfaraz Jehan Begum (defendant No.2). Shah Jehan Begum, the daughter of Nawab Rais Yar Jung, died leaving behind a son and a daughter, Syed Ali Shahreyar (plaintiff) and Noorunnisa Begum (defendant No.4). Fakir Jahan Begum, the second daughter of Nawab Rais Yar Jung, died leaving behind only one daughter, Afsar Riza Qizilbash, who died leaving behind Mozaffar Ali Khan Qizilbash (defendant No.3). The plaintiff claimed a right in the property of late Nawab Rais Yar Jung, his grandfather on the mother's side, as per Muslim law to the extent of a 16.65% share. While so, defendant Nos.5 to 10 claimed to be the purchasers of the suit property by virtue of the sale deed dated 03.05.1970 executed by the first son of Nawab Rais Yar Jung, Mir Fazilath Hussain, in favour of the mother of defendant Nos.5 to 9 and defendant Nos.10 and 11. As per this sale deed, Nawab Rais Yar Jung entered into an agreement of sale on 14.12.1956 in respect of the entire extent of Acs.248.00 but he died before completion of the sale transaction. The agreement holders sold their rights to one Mahesh Chand, father of defendant Nos.5 to 9, and defendant Nos.10 and 11, by way of agreement-cum-deed of assignment dated 22.09.1964. Thereafter, a sale deed was executed on 03.05.1970 by Mir Fazilath Hussain in favour of the mother of defendant Nos.5 to 9 and defendant Nos.10 and 11, along with Mahesh Chand. Be it noted that the plaintiff also sought a declaration in the present suit that this sale deed was null and void.

The contention of defendant Nos.5 to 10 was that the suit property was delivered by the vendors to the mother of defendant Nos.5 to 9 and defendant Nos.10 and 11, in 1970 itself and therefore, the question of the plaintiff claiming to be in joint possession thereof did not arise. In consequence, payment of court fee by the plaintiff under Section 34(2) of the Act of 1956 was assailed and a direction was sought to the plaintiff, by way of the subject IA, to pay court fee under Section 34(1) of the Act of 1956.

The trial Court placed reliance on ***PRANIT PROJECTS (P) LTD., HYDERABAD V/s. GOUNDRA YADAIAH***[1], wherein it was held that the aspect of sufficiency of court fee poses a mixed question of fact and law and it would not be possible for the trial Court to reject the plaint straight away and that it would be more appropriate for the trial Court to frame a specific issue in that regard and deal with the same in the final adjudication. It was further pointed out that it would always be within the power of the Court to direct payment of deficit court fee as a condition precedent for drawing up the decree or for its execution. Applying this proposition, the trial Court observed that it would be necessary to frame a specific issue as to the sufficiency or otherwise of the valuation in the plaint and the court fee paid thereon and to answer the same along with the other issues at the time of final adjudication. The I.A. was accordingly dismissed.

Though respondent Nos.2, 3 and 5 in this revision, being defendant Nos.1, 2 and 4, are still not served, the matter is amenable to final disposal on merits at this stage as the issue arising for consideration is mainly between defendant Nos.5 to 10, the petitioners herein, and respondent No.1, the plaintiff in the suit.

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[1] 2014 (6) ALD 232

Sri Rakesh Sanghi, learned counsel for the petitioners-defendant Nos.5 to 10, would contend that the trial Court completely lost sight of the recital in the registered sale deed dated 03.05.1970 that possession of the property sold thereunder was delivered to the purchasers. Learned counsel would argue that once such a recital found place in the registered document, Section 92 of the Indian Evidence Act, 1872 (for brevity, 'the Act of 1872') would apply and it would not be permissible for the plaintiff to contend to the effect that he remained in joint possession along with the other heirs of late Nawab Rais Yar Jung. Learned counsel would further state that Mir Fazilath Hussain, the eldest son of late Nawab Rais Yar Jung, died issueless and therefore the plaintiff, being his nephew, would also be his heir and as he would claim under him, he would be bound by the recital in the sale deed executed by late Mir Fazilath Hussain and Section 92 of the Act of 1872 would apply on all fours.

Per contra, Sri Ashok Kumar Agarwal, learned counsel for respondent No.1-plaintiff, would contend that his client asserted rights independently, being the grandson of Nawab Rais Yar Jung, and not through his maternal uncle, Mir Fazilath Hussain. Learned counsel would point out that the suit was not filed in a representative capacity and that the plaintiff was asserting his claim on the strength of his own individual right. He would therefore submit that Section 92 of the Act of 1872 has no application to him.

In ***PRANIT PROJECTS (P) LTD.***[1], an application was filed under Section 11(2) of the Act of 1956 read with Order 7 Rule 11 CPC on the ground of insufficiency of court fee and to reject the plaint. The issue in the said case was also whether Section 34(1) or 34(2) of the Act of 1956 would have application. On facts, this Court found that the dispute as to which provision had application required an elaborate enquiry that could only be possible during the course of the trial and as sufficiency of court fee was a mixed question of fact and law, it would not be permissible to reject the plaint straightaway as sought by the defendants therein. Taking note of the fact that the Court would not become *functus officio* and it would be within its power to direct payment of deficit court fee by making the decree inexecutable till such payment, this Court directed the trial Court to frame a specific issue as to the sufficiency or otherwise of the valuation made in the plaint and the court fee paid thereon. It is on the strength of this judgment that the trial Court dismissed the subject I.A.

Section 92 of the Act of 1872 states that when the terms of any contract, grant or other disposition of property is reduced to the form of a document, no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument or their representatives in interest for the purpose of contradicting, varying, adding to or subtracting from its terms. It may be noted that thereunder, evidence of any oral agreement or statement, contrary to the written document, which would contradict, vary, add to or subtract from the terms and conditions of such written document, shall not be admitted as between the parties to the document or their 'representatives in interest'.

The argument of Sri Rakesh Sanghi, learned counsel, is that the recital in the sale deed dated 03.05.1970 to the effect that possession of the land sold thereunder was delivered to the purchasers would be binding upon the plaintiff under the aforesaid statutory provision.

From a bare perusal of the provision, it is clear that unless the plaintiff is shown to be a 'representative in interest' of the party to the document, this provision would have no application to him. Mir Fazilath Hussain was the first son of late Nawab Rais Yar Jung. However, the plaintiff claims a share in the suit property, not by virtue of his relationship with Mir Fazilath Hussain, but in the capacity of being the grandson of late Nawab Rais Yar Jung. It may be true that Mir Fazilath Hussain died issueless and therefore, his share would also have to be distributed amongst the other heirs in accordance with Muslim law, but that by itself would not make the plaintiff a representative in interest of Mir Fazilath Hussain, overlooking the independent right claimed by him as the grandson of Nawab Rais Yar Jung. The recitals in the sale deed dated 03.05.1970 would therefore not be binding on him under Section 92 of the Act of 1872. Once this provision is out of the picture, the question as to whether the plaintiff can claim to be in joint possession of the suit property along with the other heirs or whether he would be liable to pay court fee on the basis of market value under Section 34(1) of the Act of 1956 requires a detailed examination and therefore, the order of the trial Court, holding to the effect that a specific issue requires to be framed in this regard to be tried and adjudicated along with other issues at the time of final disposal, warrants no interference.

Significantly, in ***SRI RATHNAVARMARAJA V/s. SMT.VIMLA***[2], the Supreme Court observed that the provisions of the Act of 1956 do not arm the defendant with a weapon of technicality to obstruct the progress of the suit by approaching the High Court in revision against an order determining the court fee payable. It was further

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[2] AIR 1961 SC 1299

observed therein that the High Court ought not to entertain a revision on the question of court fee at the instance of the defendant, when no question of jurisdiction was involved.

Long thereafter, in ***CHARLAPALLI YADAMMA V/s. MIRYALA GOPAIAH***[3], this Court held that as long as the plaintiff does not plead that his possession has been excluded, he cannot be required to pay court fee under Section 34(1) of the Act of 1956. Reliance in this regard was placed on ***NEELAVATHI V/s. N.NATARAJAN***[4], wherein it was held by the Supreme Court that unless the plaintiff himself averred that he was excluded from joint possession of the suit property, he could not be required to pay *ad valorem* court fee.

On the above analysis, this Court finds that the trial Court rightly decided to frame a specific issue as to whether the valuation of the suit was proper and as to the correctness of the court fee paid thereon. The arguments to the contrary advanced by defendant Nos.5 to 10 that such an exercise should be undertaken at this stage under Section 11(2) of the Act of 1956 were therefore rightly rejected by the trial Court. The order under revision does not brook any interference, be it on facts or in law.

The civil revision petition is devoid of merit and is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

20th OCTOBER, 2017

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[3] 2003 (2) An.W.R. 423 (A.P.)
[4] AIR 1980 SC 691